



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF PORTSMOUTH

Complainant

v.

LOCAL #1386, AFSCME, AFL-CIO

Respondent

CASE NO. A-0411:17

DECISION NO. 90-108

APPEARANCES

Representing City of Portsmouth:

Thomas E. Cayten, Chief Negotiator

Representing Local #1386, AFSCME, AFL-CIO:

Vincent Wenners, Esq., Counsel

Also appearing:

Bill Scott, City of Portsmouth
Harriett Spencer, AFSCME, Council 93

BACKGROUND

On August 9, 1989, the City of Portsmouth (City) by its chief negotiator Thomas E. Cayten filed an unfair labor practice charge against Local 1386, AFSCME, AFL-CIO (Union) for failing to negotiate in good faith by refusing to discuss or consider the deletion of a certain portion of the contract language which had been in existence for some time. The specific language referenced in the charge is 3.2 of the expired contract between the parties and as follows:

"Whenever the city reemployes personnel or employs new personnel, such individuals, provided they are designated non-supervisory employees in positions defined in Section 3.4 below, shall become members of Local 1386, A.F.S.C.M.E. within eight (8) days after completing the probationary period as a permanent condition of continued employment."

The City alleges that the union insists it will not modify the existing language and that it expects said language to be enforced. The charge also states that the City had used all available avenues to settle this issue and produced certain letters to substantiate this conclusion; that the union is adamant in its position and will not consider modification of the language cited above; and, that such language is illegal in a contract and therefore cannot be included.

The relief requested by the City is an Order compelling the Union to negotiate in good faith and to delete the security clause since it violates 273-A:5 (i), (c) and II (c).

Hearing in this matter was held on November 16, 1989 at the PELRB office in Concord, New Hampshire.

In opening statements Thomas Cayten on behalf of the City stated that he clearly believed that a union security clause is in violation of RSA 273-A:5 (i), (c) and II (c) and both parties indicated that the City would stipulate that the pertinent clause is the attachment to the unfair labor practice charge and is currently contained in an old contract between the City and AFSCME.

Attorney Vincent Wenners representing AFSCME opened and cited the Berlin Police case, a 1968 case under a different statute, in which the court ruled that the union security clause is a permissive subject of negotiations. He further cited PELRB's decision in the Abbott case #84-22 which incorporated generally the provisions of the '68 decision.

Witness William Scott, Welfare and Personnel Director, testified as to the workings of the security clause as presently contained in the old contract and indicated that it had been adhered to in past practice. He also stated that Katherine Holman, Librarian, expressed concern about being forced to join the union and testified that she had signed a union card after being advised by the Personnel Director that her termination was imminent if she did not sign a dues deduction card.

In rebuttal to this statement Attorney Wenners stated that no one had ever been terminated in the past because of a failure to sign these cards.

Attorney Cayten again testified about the three (3) other contracts in the city government that had contained the same security clause and all but AFSCME have agreed to remove the clause.

Witness Harriett Spencer representing AFSCME testified that the Union had serviced this contract for the past five (5) years and had never requested the employer terminate an employee for non-payment of dues and offered further testimony regarding certain relationships between employees and the union where individuals had gone longer than the eight (8) days after termination of their probationary period and had failed to sign cards for union dues deduction.

The City offered as a hypothetical situation where the City took no action with respect to dues deductions and the Union would come to the Board and request an order ordering the City to abide by the agreement and security clause. This conclusion represents a fair representation of hypothetical actions at that particular time, but appears not to be factual.

In closing statements, Attorney Wenners for the Union stated he felt the '68 Berlin Police Decision stands, operable at the present time and that if the language is in the current contract, it becomes a mandatory subject for negotiations.

FINDINGS OF FACT

After considering all of the oral testimony and reviewing exhibits, the Board finds as follows:

1. The union security clause, ¶3.2 was properly negotiated between the parties and subscribed to as evidenced by the signatures to the C.B.A. contained thereon.
2. While the Tremblay v. Berlin Police Union case decision of the Supreme Court appears to sanction union security clauses, however, it does not mandate that they must be included.
3. PELRB concludes that 273-A has superceded certain other statutes enacted prior to 1975 and we cite specifically the Rockingham County Superior Court case #90-E-572. (Town of Hampton)
4. The subject of agency shop as contained in the expired C.B.A. between the parties was properly negotiated by the parties and is a permissive subject of negotiations and will be recognized by PELRB if both parties mutually agree upon such language.

ORDER OF THE BOARD

PELRB finds that AFSCME has committed unfair labor practice in that it refuses to discuss the item of the agency shop and ORDERS the parties to negotiate the issue.

Signed this 17th day of October, 1990.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and Richard E. Molan, Esq., present and voting. Also present, Executive Director, Evelyn C. LeBrun.